

**City of Bozeman
City Attorney's Office**

*Greg Sullivan, City Attorney
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Bozeman City Attorney Codification Order 2011 – 01

December 9, 2011

Pursuant to the authority of the Bozeman City Attorney under Sec. 1.01.180 of the Bozeman Municipal Code (BMC)¹, I hereby order a correction to a clerical error in Section 1 of Ordinance 1818 (effective date of January 17, 2012).

The following correction as shown below shall be made to Sec. 36.03.275.A, BMC, and shall be incorporated into the Bozeman Municipal Code at the time Ordinance 1818 becomes effective on January 17, 2012:

“36.03.275. Electronic communications device usage while driving prohibited; municipal infraction penalty.

A. No person shall use or have in their immediate physical possession a hand held electronic communication device while operating a motor vehicle, motorcycle, quadricycle, or a bicycle on a public highway as defined in Sect. 61-1-101~~2~~(27), MCA, within the City limits.”

The remainder of 36.03.275, BMC, as adopted by Ordinance 1818 shall not be altered by this order.

This order shall be placed on the Municipal Code Corporation's website serving the Bozeman Municipal Code under new legislation until the next supplement incorporating Ordinance 1818. In addition, the City Clerk shall keep this order in the numerically ordered file named “City Attorney Codification Orders” and shall also attach a copy of this order to the signed original of Ordinance 1818.

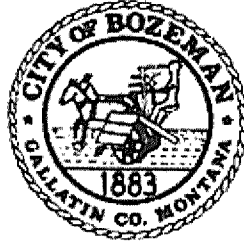
Dated this 9th day of December, 2011.

BOZEMAN CITY ATTORNEY'S OFFICE

Greg Sullivan, Bozeman City Attorney

¹ Sec. 1.01.180. - Codification powers.

The city attorney may change the wording of captions; rearrange sections and change reference numbers to agree with the renumbered chapters, sections or other parts; substitute the proper subsection, section, chapter or other division numbers; strike out figures or words that are merely repetitious; change capitalization and style for the purpose of uniformity; and correct manifest clerical or typographical errors.



ORDINANCE 1818

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA, PROHIBITING THE USE OF HAND HELD ELECTRONIC COMMUNICATIONS DEVICES WHILE OPERATING A MOTOR VEHICLE.

WHEREAS, the regulations regarding motor vehicles and traffic are found at Chapter 36 of the Bozeman Municipal Code; and

WHEREAS, the use of mobile telephones and other electronic communications devices while operating a motor vehicle presents an unacceptable risk to the driving public by creating a driving distraction.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Bozeman, Montana, as follows:

Section 1

That a new section of the Bozeman Municipal Code is hereby added to read as follows:

“36.03.275. Electronic communications device usage while driving prohibited; municipal infraction penalty.

- A. No person shall use or have in their immediate physical possession a hand held electronic communication device while operating a motor vehicle, motorcycle, quadricycle, or a bicycle on a public highway as defined in Sect. 61-1-102(27), MCA, within the City limits.
- B. “Hand held electronic communications device” includes wireless or cellular phones, Blackberries, smart phones, i-phones, laptop and notebook computers utilizing VOIP (voice over internet protocol) technology, navigational systems, and any other mobile communications device that uses short-wave analog or digital radio transmissions between the device and a transmitter to permit wireless communications to and from the user of the device.
- C. “Immediate physical possession” means touching the hand held electronic communications device, or physically holding the device in one’s hand or up to one’s ear. Simply having the electronic communications device on one’s person or in a motor vehicle does not constitute immediate physical possession.

D. Exceptions:

1. This section shall not apply to any person reporting a health, fire, safety, or police emergency.
 2. This section shall not apply to governmental fire agencies, ambulance services, law enforcement agencies, emergency responders, or any person operating an "Authorized Emergency Vehicle" as defined in Sect. 61-8-102(2)(a), MCA while in the performance and scope of their work related duties.
 3. This section shall not apply to passengers in a motor vehicle, or persons using a hand held electronic communications device while maintaining a motor vehicle in a stationary position, not in gear, while in a parking lane or space out of moving traffic lanes.
 4. This section shall not apply to persons using a "hands free device. A "hands free device" shall mean an electronic communication device that has an internal feature or function, or that is equipped with an attachment or addition, by which a user engages the device and by which the continual or repeated use of either hand is not required to activate, deactivate, initiate, or maintain a function of the device. A hands free device does not include a device where touching the device is necessary to dial a phone number or enter text. Use of a device's internal speaker alone does not constitute a hands free device.
 5. This section does not apply to drivers using two-way radios while in the performance and scope of their work-related duties.
 6. This section shall not apply to drivers holding a valid amateur radio operator license issued by the Federal Communications Commission while using a two-way radio.
 7. This section shall not apply to a driver operating a motor vehicle or motorcycle on all portions of Interstate 90 considered controlled access including the entirety of the exit and entrance ramps.
- E. Violation; Penalty: A person who violates this section shall be deemed to have committed a municipal infraction, a civil offense, and for each violation a civil penalty of \$100.00 shall be imposed.

Section 2

Repealer.

All provisions of the ordinances of the City of Bozeman in conflict with the provisions of this ordinance are, and the same are hereby, repealed and all other provisions of the ordinances of the City of Bozeman not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 3

Savings Provision.

This ordinance does not affect the rights and duties that matured, penalties that were incurred or proceedings that were begun before the effective date of this ordinance. All other provisions of the Bozeman Municipal Code not amended by this Ordinance shall remain in full force and effect.

Section 4

Severability.

That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof, other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Bozeman Municipal Code as a whole.

Section 5

Codification Instruction.

The provisions of Sections 1 shall be codified at 36.03.280. All other existing sections of Chapter 38, Art. 3, Division 2 shall remain in effect and be renumbered accordingly.

Section 6

Report to Commission.

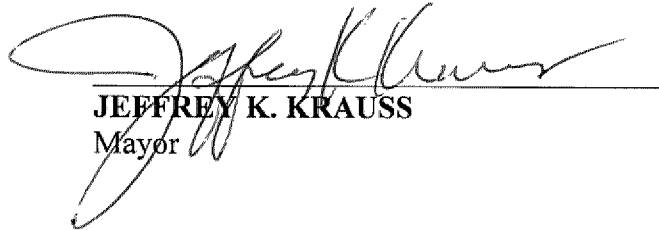
No later than one year after the effective date the City Manager shall report to the Commission on the effectiveness of this Ordinance.


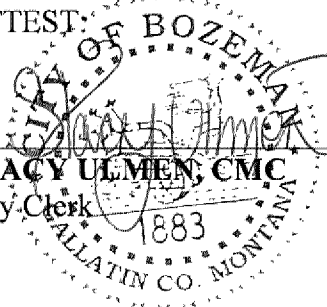
Section 7

Effective Date.

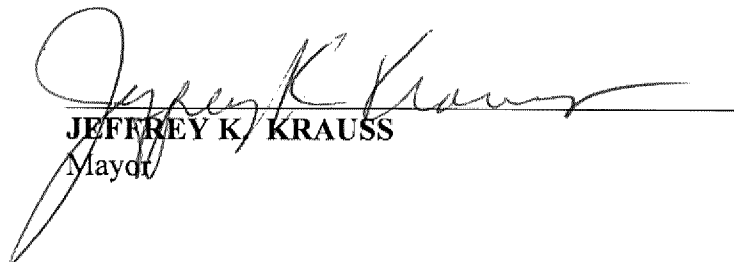
This ordinance shall be in full force and effect on January 17, 2012.

PROVISIONALLY ADOPTED by the City Commission of the City of Bozeman, Montana, on first reading at a regular session thereof held on the 14th day of November, 2011.


JEFFREY K. KRAUSS
Mayor

ATTEST:

STACY ULLEN, CMC
City Clerk



FINALLY PASSED, ADOPTED AND APPROVED by the City Commission of the City of Bozeman, Montana on second reading at a regular session thereof held on the 28th day of November, 2011. The effective date of this ordinance is the 17th day of January, 2012.


JEFFREY K. KRAUSS
Mayor

ATTEST:

STACY ULLEN, CMC
City Clerk


APPROVED AS TO FORM:


GREG SULLIVAN
City Attorney